

November 2011

Parties
HER MAJESTY THE QUEEN
(*the Crown*)

and

CHORUS LIMITED
and
CHORUS NEW ZEALAND LIMITED
(*CL and CNZL*)

TELECOMMUNICATIONS SERVICE
OBLIGATIONS (TSO) DEED FOR TSO
NETWORK SERVICE

Date: 8 NOVEMBER 2011

PARTIES

- (1) **HER MAJESTY THE QUEEN** in right of New Zealand acting by and through the Minister for Communications and Information Technology ("the Crown")
- (2) **CHORUS LIMITED** and **CHORUS NEW ZEALAND LIMITED** (together with their successors "CL and CLNZ")

BY THIS DEED IT IS AGREED

Introduction

- 1 This Deed (together with the Telecom TSO Deed) replaces all of the provisions of the Telecommunications Service Obligation Deed for Local Residential Telephone Service dated 12 December 2001 between the Crown and TCNZ and TNZL as those provisions applied to the parties.
- 2 The parties record that:
 - 2.1 they intend that this Deed shall be deemed to be a TSO instrument in accordance with the Act; and
 - 2.2 this Deed is entered into as a consequence of the structural separation of TCNZ and its subsidiaries on 30 November 2011.
- 3 A number of detailed matters and certain definitions are included in the Schedule to this Deed. The Schedule is part of this Deed.

Obligations relating to Principles

- 4 Unless the Crown agrees in writing otherwise in any particular case or class of cases, and subject to the other terms and conditions of this Deed:
 - 4.1 CL and CLNZ shall, and CL shall ensure that those of its subsidiaries which from time to time provide TSO network service shall, observe Principles 1 and 2 in clause 5;
 - 4.2 the business and powers of CL and CLNZ shall not be managed or exercised in a manner which is inconsistent with those Principles.

Principles

- 5 Subject to the other terms and conditions of this Deed, the following principles relating to the supply of TSO network service in New Zealand shall apply:
- 5.1 *Principle 1* – Chorus will charge Telecom no more than an amount equivalent to the regulated price of Chorus' unbundled copper low frequency service (as amended from time to time) for TSO network service provided that the overall profitability of Chorus' fixed business, as evidenced by audited accounts prepared for that business, is not or will not be unreasonably impaired. Chorus may selectively offer lower prices (including on a geographical or customer segment basis) if it wishes.
- 5.2 *Principle 2* – Chorus will make TSO network service as widely available to Telecom as Telecom is required to make local residential telephone service available under the Telecom TSO Deed.
- 6 Chorus may use any method or any technology in providing the services it is obliged to provide in this Deed, provided that doing so does not place Chorus in breach of this Deed.

Unreasonable impairment of overall profitability

- 7 If Chorus considers that the overall profitability of Chorus' fixed business has been, is being or will be unreasonably impaired in respect of Principle 1 and wishes to increase the price for TSO network service ("the TSO network service price") above an amount equivalent to the regulated price (as amended from time to time) for Chorus' unbundled copper low frequency service to remove or avoid that unreasonable impairment, Chorus shall notify the Crown of the desire to increase the TSO network service price for this reason. Any such notice shall include:
- 7.1 the date of the proposed increase;
- 7.2 full details of the proposed increase;
- 7.3 information which Chorus considers justifies the proposed increase.

For the avoidance of doubt, nothing in this Deed allows Chorus to charge more than the regulated price (as amended from time to time) for the regulated service of Chorus' unbundled copper low frequency service.

- 8 When considering its view on Chorus' proposal, the Crown will give full and due consideration to projected forward looking profits of Chorus' fixed business and the recovery and past recovery of a reasonable weighted average cost of capital for that business having regard to the matters in clause 11.
- 9 The Crown shall inform Chorus in writing of the Crown's considered view on whether the proposed increase in the TSO network service price would be a breach in respect of Principle 1 no later than 65 working days after the date on which the Crown receives all information reasonably required to consider Chorus' notice under clause 7. Chorus shall not increase the TSO network service price before the earlier of the date that the Crown informs Chorus in writing of the Crown's view and the expiry of the 65 working day period. However, any such increase may take into account unreasonable impairment of profitability from (but not before) the commencement ("start date") of the financial year of Chorus immediately preceding the financial year of Chorus in which the notice under clause 7 is given, as well as subsequent projected unreasonable impairment of profitability.
- 10 If the Crown considers that any such increase is, or would be, a breach in respect of Principle 1 it may take such legal proceedings against Chorus as the Crown considers appropriate. Likewise, Chorus may take such proceedings in respect of the matters referred to in clauses 5.1, 7 to 9, and 11 as Chorus considers appropriate.
- 11 The parties agree that in determining (including the Court determining) whether there is or would be a breach in respect of Principle 1, then as well as the evidence of the audited accounts prepared for Chorus' fixed business, relevant factors include (without limitation):
 - 11.1 the appropriateness of the methodology used in preparing such accounts, and application of that methodology;
 - 11.2 the projections of forward looking profits for Chorus' fixed business, the reasonableness of the assumptions made in deriving these projections, and the reasonableness of the period for which the projected recovery is sought; and
 - 11.3 the projected recovery and past recovery of a reasonable weighted average cost of capital for Chorus' fixed business from the start date referred to in clause 9.

- 12 Any increase in the TSO network service price which constitutes a breach in respect of Principle 1 is a material breach of this Deed by Chorus.

TSO network service quality measures

- 13 The parties agree that there can be no guarantee that TSO network service will always be available or free of fault for Telecom to supply every Telecom residential customer at all times. Chorus agrees that TSO network service shall meet the applicable TSO network service quality measures in Part II of the Schedule.
- 14 Chorus is to:
- 14.1 report to the Crown and (pursuant to the Act) the Commerce Commission at least annually on its performance against the TSO network service quality measures;
 - 14.2 disclose to the Crown and (pursuant to the Act) the Commerce Commission the methodology (including proxy sampling methods), the relevant calculations and reasonable supporting information for the relevant calculations. Chorus may use proxy sampling methods in measuring such performance. The first report will be for the period on and from the commencement date to and including 30 June 2012;
 - 14.3 have that methodology and its implementation audited for its appropriateness to achieve a sensible and pragmatic, but robust, analysis of performance against the TSO network service quality measures; and
 - 14.4 disclose that audit report to the Crown and (pursuant to the Act) the Commerce Commission.
- Notwithstanding anything in this Deed, if Telecom complies with the service quality measures under clauses 11.1, 11.2 and 11.3(b) of the Schedule of the Telecom TSO Deed, then Chorus:
- 14.5 will be deemed to meet the service quality measures under this Deed; and
 - 14.6 may instead of reporting and disclosing under this clause 14, rely on Telecom's reporting and disclosure under clause 16 of the Telecom TSO Deed with respect to the service quality measures

under clauses 11.1, 11.2 and 11.3(b) of the Schedule of the Telecom TSO Deed.

Other services

- 15 Chorus will make available and provide the other services described in Part 1B of the Schedule.

Commencement

- 16 This Deed comes into effect on the commencement date.

Review of Deed

- 17 Either party ("the first party") may at any time after the commencement date give notice that it wishes to renegotiate any or all terms of this Deed.

- 18 On receipt of such notice by the other party, the parties shall follow a process:

18.1 for the first party to raise concerns which are to be given full and due consideration by the other party; and

18.2 to ensure a reasonable and considered dialogue on these concerns.

Process to apply following approval of new specified TSO retail services under Telecom TSO Deed

- 19 Should a new specified TSO retail service be approved by the Minister under the processes set out in the Telecom TSO Deed, the parties may agree any consequential amendments under this Deed.

Termination

- 20 The Crown may terminate this Deed:

20.1 on 30 working days' notice, if there is a material breach of a material obligation of the Deed by Chorus not capable of remedy;

20.2 if there is a material breach of a material obligation of the Deed by Chorus capable of remedy, (and is not of a type which has arisen on a repetitive basis in the past) by 30 working days' notice to Chorus if such a breach has not been remedied by Chorus before 60 working days from the date of a notice given by the Crown to Chorus setting out details of the breach and requesting that it be remedied; or

20.3 on 30 working days' notice, if Chorus fails to meet in a material way all or any of its material obligations under this Deed continuously for 50 working days as a result directly or indirectly of a force majeure event.

If:

20.4 this Deed ceases to be a deemed TSO instrument for any reason;
or

20.5 the Telecom TSO Deed comes to an end for any reason;

this Deed shall come to an end.

21 The termination provisions under clause 20 are additional, and without prejudice, to any other right or remedy either party may have at law. Clauses 23, 24, 25 and this clause 21 shall survive termination of this Deed.

Information

22 CL and CNZL shall provide the Crown with such information as the Crown may reasonably request:

22.1 in respect of any claim by Telecom under the Telecom TSO Deed that clause 6.1 or 6.2 of the Telecom TSO Deed applies;

22.2 to enable the Crown to give full and due consideration to the matters it must consider under clauses 8 and 9;

22.3 in respect of any claim by Chorus that clause 28 applies.

Confidential information

23 The Crown undertakes that it will:

23.1 not disclose, without the prior written consent of CL and CNZL, any confidential information supplied to the Crown by Chorus in connection with this Deed to any person other than:

(a) the Crown's Ministers; and

(b) officers, employees, contractors, agents and professional advisers of or to the Crown, each of whom is under an express or implied obligation of confidence;

directly concerned in the operation of this Deed, unless such information is:

- (c) publicly available at the time of receipt by the Crown or has since become publicly available other than by breach by the Crown of this clause;
- (d) required to be released under any applicable law or any Standing Orders of the House of Representatives; or
- (e) used by the Crown in legal proceedings in connection with this Deed.

Indemnity

- 24 In the event of the Crown bringing proceedings to enforce any of CL's and CNZL's obligations under this Deed and having judgment ultimately awarded in its favour, CL and CNZL shall indemnify the Crown against all the reasonable costs of that action on a solicitor and own client basis.

Enforceability

- 25 This Deed is not intended to create any obligations enforceable at the suit of any persons other than CL and CNZL or the Crown.

No limit on enactments or rules of law

- 26 Nothing in this Deed shall limit, or require Chorus to contravene, any enactment or rule of law of mandatory application.

Amendment

- 27 Any amendment to this Deed must be in writing and signed by the parties.

Force majeure

- 28 Chorus shall not be liable to the Crown as a direct or indirect result of its failure to perform its obligations under this Deed by reason of an event or series of events of force majeure, being any cause or circumstance beyond Chorus' reasonable control including, but not limited to, acts of God, riot, strikes, lock-outs, labour disputes, fires, war or flood.

- 29 If Chorus is unable to fulfil its obligations due to an event of force majeure it will immediately:

29.1 notify the Crown of the reasons for its failure to fulfil its obligations and the effect of such a failure; and

29.2 take all practicable steps that Chorus acting as a reasonable and prudent telecommunications service provider would take to avoid or remove the cause and perform its obligations, except that Chorus is not required to change the way it would otherwise deal with any strike, lock-out or labour dispute.

30 Unless otherwise agreed, during the continuance of an event of force majeure Chorus' obligations under this Deed affected by force majeure shall be suspended to the extent that performance of those obligations is prevented and will resume as soon as possible after the cause or circumstance has ceased to have effect.

31 Where a force majeure event is also:

31.1 a specified matter beyond Chorus' reasonable control, then clauses 20.3 and 29;

31.2 an outage in an access network which is unplanned, then clauses 20.3 and 29.1;

31.3 an outage in an access network which was planned, then clauses 20.3 and 29;

shall not apply with respect to that force majeure event.

32 Subject to clause 31, clauses 28 and 30 only apply to relieve Chorus from liability, and Chorus' obligations under clause 30 are only suspended, if Chorus complies with clause 29.

Other TSO instrument costs

33 Subject to clause 34, nothing in this Deed shall prevent or limit Chorus from imposing a charge on persons to whom Chorus supplies services to recover Chorus' costs and expenses in relation to a TSO instrument other than this TSO instrument ("other TSO instrument costs").

34 Chorus may pass on to Chorus customers to whom TSO network service is provided, other TSO instrument costs:

34.1 properly referable, under the procedures carried out by the Commerce Commission as set out in the Act, to those Chorus customers; or

34.2 where the TSO instrument costs are not, or cannot be, properly referable under those procedures to those customers, in the proportion that the revenues derived by Chorus from those customers bears to the revenues derived from Chorus' New Zealand customer base.

No waiver

35 Except where a party has signed an express written waiver of a right or power under this Deed, no failure to exercise a right or power under this Deed prevents, or shall be construed as prejudicing, the exercise of that or any right or power on that or any other occasion. A written waiver applies only to the right or power and on the occasion specified in it.

Specific performance

36 The parties acknowledge that:

36.1 damages are unlikely to be an adequate remedy for a breach of CL's and CNZL's obligations under this Deed;

36.2 specific performance may be the most appropriate enforcement remedy; and accordingly,

36.3 CL and CNZL will not oppose any application by the Crown for specific performance in the event of an alleged breach of this Deed by CL and CNZL on the grounds that damages would be an adequate remedy.

Notices

37 Any notice required to be given to a party under the provisions of this Deed shall be in writing and shall be deemed to have been given:

37.1 as soon as the same is personally delivered to the address set out below (or such other address as a party may notify to the other by notice); or

37.2 two working days following the posting of the same by prepaid registered mail to such address.

The Crown

The Minister for Communications and Information Technology
PARLIAMENT BUILDINGS

Chorus Limited

Chorus Limited

Level 2, Telecom Place

167 Victoria Street West

Auckland 1142

Attention: General Counsel and Company Secretary

Chorus New Zealand Limited

Chorus New Zealand Limited

Level 2, Telecom Place

167 Victoria Street West

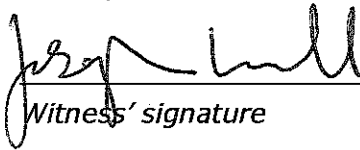
Auckland 1142

Attention: General Counsel and Company Secretary

EXECUTION

Signed for and on behalf of **HER
MAJESTY THE QUEEN**
by the Minister for Communications
and Information Technology

in the presence of:



Witness' signature

Joseph Connell

Witness' name

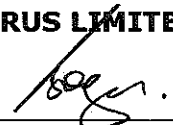
Private Secretary

Witness' occupation

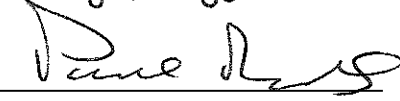
C/- Parliament Buildings

Witness' address

Signed by **CHORUS LIMITED**

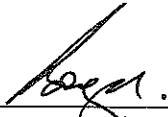


Director WAYNE BOYD

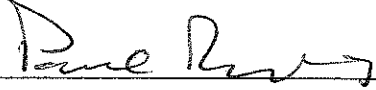


Director PAUL REYNOLDS

Signed by **CHORUS NEW ZEALAND
LIMITED**



Director **WAYNE BOYD**



Director **PAUL REYNOLDS**

SCHEDULE

PART IA – SERVICE DEFINITION

TSO network service

- 1 “TSO network service” means the Baseband service provided to Telecom as the input service for use by Telecom in providing local residential telephone service under the Telecom TSO Deed. The TSO network service is described as follows:

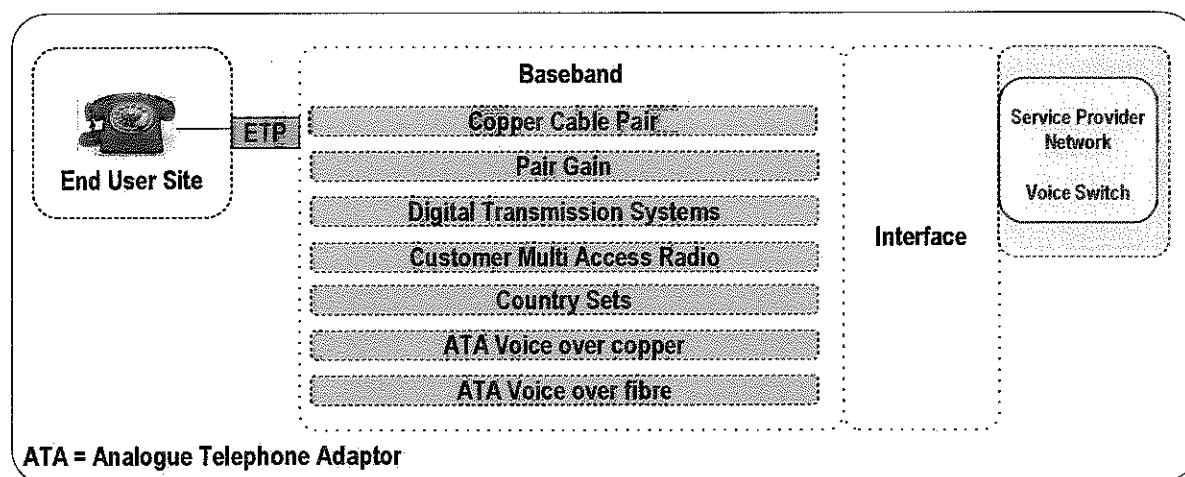
Introduction

Baseband provides the ability for service providers to offer analogue telephony services, regardless of their access technology.

The service is delivered to the service provider at agreed demarcation points using a range of technical interfaces. Service providers can either terminate the service at that location, typically using a Voice Switch, or use a compliant backhaul service to terminate it at a remote location.

Service description

Baseband provides an analogue voice path (that has an analogue interface provided by Chorus at the customer premises) from the customer premises to a service provider using a range of technologies, as shown below



Key features:

- A single price irrespective of access technology.
- Flexible technology options to allow maximum coverage of the service.
- Service is handed over at designated points and interfaces based on access technology.

Changing access technology

Chorus will provide notice to service providers of a change in voice technology at a given site, and work with affected service providers to manage the migration.

Changing access technology will probably result in a change of delivery location and interface options.

PART 1B - OTHER SERVICES

- 2 Chorus will also make available and provide TSO network service as an input to the service that is equivalent to local residential telephone service and available to resellers of that equivalent service. The price shall be equivalent to the amount of the regulated price (as amended from time to time) for Chorus' unbundled copper low frequency service.

PART II – SERVICE QUALITY MEASURES

TSO network service quality measures

- 3 The TSO network service quality measures agreed between the Crown and Chorus and referred to in this Deed are as follows:

Chorus will design and manage the TSO network service so that in normal operating conditions (and recognising always that TSO network service is only one input into the provision by Telecom of local residential telephone service), the TSO network service allows Telecom to meet the service quality measures set out in clauses 11.1, 11.2 and 11.3(b) of the Schedule to the Telecom TSO Deed.

PART III - INTERPRETATION

- 4 In this Deed, except where the context otherwise requires:
- 4.1 *Chorus* means, at any time, Chorus Limited and those of its subsidiaries which supply in New Zealand TSO network service and, if the case or use requires, includes a reference to Chorus Limited or any such subsidiary alone or in any combination;
- 4.2 *Chorus acting as a reasonable and prudent telecommunications service provider* means Chorus acting in the same way as a reasonable and prudent telecommunications service provider with:
- (a) comparable network characteristics;
 - (b) a comparable physical and legal environment; and
 - (c) comparable telecommunications service obligations;
- would act;
- 4.3 *Chorus' fixed business* means Chorus' New Zealand fixed business including the provision of inputs into local access and calling, national and international tolls, data services, and value added services associated with the foregoing (but excluding businesses such as the International, off-shore, Mobile, Paging, Payphones and information services businesses);
- 4.4 *CL* means Chorus Limited;
- 4.5 *CLNZ* means Chorus New Zealand Limited;
- 4.6 *commencement date* means 1 December 2011;
- 4.7 *confidential information* means all information which is confidential, proprietary or commercially sensitive to Chorus;
- 4.8 *local residential telephone service* has the meaning given that term in the Telecom TSO Deed;
- 4.9 *outage in an access network* means:

- (a) a planned outage in an access network made by Chorus acting as a reasonable and prudent telecommunications service provider; or
- (b) an unplanned outage in an access network beyond Chorus' reasonable control;

4.10 *parties* means CL and CLNZ (together), and the Crown; and *party* means CL and CLNZ (together), or the Crown (as the context requires);

4.11 *service* includes part of a service;

4.12 *specified matter beyond Chorus' reasonable control* means any isolated matter of the following kind (whether or not constituting an event of force majeure):

- (a) a matter for which a third party carrier or Internet Service Provider is responsible such as impairment of the third party carrier's network or a failure by the carrier to connect a call that is handed over by Chorus to the network of that other carrier;
- (b) an abnormal traffic condition caused by a third party, such as abnormally high calling volumes generated by radio or television promotions;
- (c) an adverse effect from electromagnetic interference from a third party source (such as interference from electric fences), house wiring or customer premises equipment (such as computers and computer modems); or
- (d) a breach or likely breach by a third party carrier or Internet Service Provider of any agreement or arrangement with Chorus, or any failure to reach such an agreement or arrangement, which relates directly or indirectly to TSO network service and in respect of which Chorus suspends, restricts or refuses to supply services to the third party;

4.13 *TCNZ* means Telecom Corporation of New Zealand Limited;

4.14 *Telecom* means, at any time, TCNZ and those of its subsidiaries which supply in New Zealand local residential telephone service

and, if the case or use requires, includes a reference to TCNZ or any such subsidiary alone or in any combination;

4.15 *Telecom TSO Deed* means the Telecommunications Service Obligations Deed between the Crown and TCNZ and TNZL, which is entered into simultaneously with this Deed;

4.16 *TNZL* means Telecom New Zealand Limited;

4.17 *TSO network service* has the meaning given that term in Part 1A of the Schedule;

4.18 *working day* means a day other than a Saturday, a Sunday, or a statutory holiday in Wellington.

Interpretation

- 5 The headings are for convenience only and do not form part of this Deed.
- 6 References to clause numbers in this Deed are to clause numbers in the Deed (not including this Schedule), unless otherwise specified.
- 7 The singular includes the plural, and vice versa.